

Shambhu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-29-2002

Reported in : 2003(3)WLN499

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Appeal No. : D.B. Criminal Appeal No. 165 of 1995

Appellant : Shambhu

Respondent : State of Rajasthan

Judgement :

Fateh Chand Bansal, J.

1. This appeal is directed against the judgment dated 9.2.1995 passed by learned Special Judge (SC/ST Cases), Kota, whereby the appellant-Shambhu has been convicted for offence under Section 302, IPC and sentenced to undergo imprisonment for life with a fine of Rs. 2,000/-, in default of payment of fine to further undergo six months simple imprisonment. He has also been convicted for offence under Section 324, IPC and sentenced to undergo imprisonment for one year. Both the sentences were ordered to run concurrently.

2. The brief facts of the prosecution case are that PW-1 Chhotu submitted a written report Ex. P. 1 to S.H.O., P.S. Mandana (Distt. Kota) at police outpost-

Jagpura on 24.6.1990 at 7:30 p.m. It was, inter alia, stated in the written report that today at about 6:00 p.m., his brother Devlal was milking a buffalo belonging to Madholal Kalal near the house of Kajodi Lal. The Accused-Shambhu S/o Panchu, Uda S/o Surajmal Bheel, Kalu S/o Madho Bheel, Latoor S/o Kheta Bheel were having liquor in front of the house of Kajodi Lal. When the accused made hue and cry, the buffalo got irritated and so Devlal told the accused not to make outcry. Thereafter all the accused started beating Devlal. When his brother Latoor (deceased) came to rescue Devlal, accused Uda, Kalu & Latoor caught hold him and told Shambhu to kill the deceased-Latoor. Thereafter, Shambhu took out a knife from the pocket of his Pant (Trousers) and inflicted injury on the chest of the deceased-Latoor. Thereafter, Shambhu gave another knife injury on the abdomen of the deceased, when he came to rescue his brother Latoor, Accused Shambhu caused injury with knife on his right hand. It was also stated that Accused Uda gave a blow with the handle of knife on the neck of the deceased. Uda (PW. 4), Dhulilal Kalal, Bhura (PW 3), Nanda (PW-6) and his father Lala (PW-5) had seen the occurrence. His brother Latoor had died on the spot. The written report Ex. P. 1 was sent to Police Station-Mandana by S.H.O., through Constable-Premchand. Thereafter a formal First Information Report-Ex. P. 9 was registered under Sections 302, 307/34, IPC and investigation commenced.

3. On the said day, the Investigating Officer PW-10 Roop Singh reached at the spot and prepared the Inquest Report Ex. P. 2 on 25.6.1990 at 8:00 a.m. Site Plan Ex. P. 3 was also prepared. Autopsy on the dead body of the deceased Latoor was conducted by PW-7 Dr. Y.K. Sharma, medical Jurist, M.B.S. Hospital, Kota on 25.6.1990 at 9:30 a.m. and he prepared the post-mortem report Ex. P. 8. He also examined injured Chhotu Lal and prepared injury report Ex. P. 7. The Investigating Officer seized and sealed the shirt & baniyan of the deceased vide Ex. P. 21. Accused-Latoor, Uda, Kalulal & Shambhu were arrested. Thereafter on the information and at the instance of accused-Shambhu, a knife was recovered on 2.6.1990 from his house. Recovery Memo is Ex. P. 18. A knife was also recovered on the information and at the instance of Accused-Uda. Having sealed the knife, the Investigating Officer prepared the Recovery Memo Ex. P. 16. The statements of the witnesses were recorded under Section 161, Cr PC. On completion of the investigation, a chargesheet was laid against all the four accused. The learned

Judicial Magistrate No. 2, Kota (South) committed the case to the Court of Sessions Judge, Kota. In due course, the case came up for trial in the Court of Additional Sessions Judge, No. 2, Kota.

4. The learned Additional Sessions Judge framed charges under Sections 302 & 324 against the appellant accused-Shambhu and charges under Sections 302/34 & 324/34, IPC against the remaining accused. All the accused denied the charges and claimed to be tried. In due course, on transfer, the case was received by the Special Judge. The prosecution examined as many as 16 witnesses. In their statements recorded under Section 313, Cr PC, the accused claimed innocence and stated that they were falsely implicated. In defence, no witness was examined.

5. The learned trial Judge, after hearing the final submissions, acquitted Uda and Latoor from all the charges framed against them. Accused Kalu was convicted and sentenced under Section 302/34 and was sentenced to suffer imprisonment for life with a fine of Rs. 2,000/-. He was acquitted from the charges under Section 324/34. We have been told by the learned Public Prosecutor that accused Kalu did not file any appeal against his conviction and sentence. The appellant Shambhu was convicted and sentenced as indicated here-in-above.

6. We have heard the learned counsel for the appellant, learned Public Prosecutor and scanned and scrutinized the material on record.

7. There is no dispute that the deceased Latoor met with homicidal death and this fact is established by the medical evidence on record. PW-7 Dr. Y.K. Sharma stated that on 25.6.1990 at 9:30 a.m., he conducted the post-mortem examination on the dead body of the deceased-Latoor and found the following injuries:

(1) Stab wound 1' x 1/4' x 3' vertical on anterior fold, left Axilla, bleeding was coming out.

(2) Stab wound 1' x 3/4' x cavity deep vertical on left iliac fossa 2' left, 3' below umbilicus, two folds of intestine coming out through wound 3' long. Direction of the wound was upward and medially puncturing abdominal Aorta. Wound in Aorta was 1/2'x 1/4'x cavity deep size and bleeding was coming out.

8. Dr. Sharma further stated that injury No. 2 was sufficient in the ordinary course of nature to cause death. He also stated that cause of death was hemorrhagic shock as a result of ante-mortem injury to abdominal Aorta. He prepared the post-mortem report Ex. P. 8, which bears his signatures. The learned counsel for the appellant did not challenge the veracity of Dr. Sharma. In our opinion also, the statement of Dr. Sharma is trustworthy and it has been proved beyond reasonable doubt by the prosecution that the deceased Latoor met with the homicidal death.

9. The prosecution case rests upon the testimony of PW-1 Chhotu, PW-5 Lala and PW-6 Nanda. Besides these three witnesses, the prosecution examined PW 3 Bhuralal, PW-4 Udalal and PW-12 Ramchandra also as eye-witnesses. They did not support the prosecution with regard to involvement of the appellant Shambhu. PW-3 Bhuralal and PW-4 Udalal were named as eye-witnesses in the written report Ex. P. 1. PW-3 Bhuralal stated that when he was returning from his field, he saw the scuffle among Kalu, Latoor, Shambhu and son of Surajmal, who were drunk. He further stated that he could not say who caused the injury to the deceased Latoor. Bhuralal was declared hostile by the learned Public Prosecutor. PW-4 Udalal stated that Kalu, Latoor, Uda and Shambhu were drunk and asked Devlal 'where was Thekedarni'? Devlal pleaded ignorance. Thereafter, the deceased Latoor came there and asked them why were they fighting? He further stated that accused caused injury on the chest of the deceased. Thereafter he went inside his house and, therefore, could not say what happened later on. In his cross-examination, he deposed that it was incorrect that Shambhu gave knife blow to the deceased. Thus, PW-4 Udalal also did to support the prosecution. PW-12 Ramchandra was not named in the written report Ex. P. 1. He stated that on the said day, he was standing at a shop, he saw Gobari Lal @ Shambhu, Kalu, Latoor and Uda beating Latoor, the deceased. He further stated that he did not remember on which part of the body of the deceased, Shambhu caused injury. PW 12 Ramchandra was declared hostile by the prosecution. As stated above, he was not named in the written report Ex. P. 1. He is a chance witness and does not belong to the village in which the incident had taken place. Having considered the entire statement of PW-12 Ramchandra, we are of the opinion that he did not see the incident and on his testimony, it can not be held that the appellant had caused any injury to the deceased.

10. Now, we come to the testimony of PW-1 Chhotu, PW-5 Lala and PW-6 Nanda. The learned counsel for the appellant contended that the testimony of PW-1 Chhotu, PW-5 Lala and PW-6 Nanda is not reliable. They are real brother, father and maternal uncle of the deceased respectively and, therefore, they are partisan as well as interested witnesses. He further contended that there are material contradiction among their statements and they have made improvements from their police statements. Hence, they could not be relied on by the trial Judge and conviction of the appellant could not be recorded upon their testimony. The learned Public Prosecutor supported the view of the learned Judge.

11. PW 1 Chhotu, PW-5 Lala & PW-6 Nanda are the real brother, father and maternal uncle of the deceased respectively. In State of Haryana v. Ram Singh : 2002 CriLJ987 , the Apex Court held that 'Admittedly all the supposed eye witnesses are relations of the deceased. As such they fall within a category of interested witnesses. It is not that the evidence ought to be discredited by reason of the witness being simply an interested witness but in that event the Court will be rather strict in its scrutiny as to the acceptability of such an evidence.' Keeping in view the aforesaid decision of the Apex Court, the testimony of the aforementioned 3 witnesses need to be scanned and scrutinized.

12. PW-1 Chhotu stated that on the said day, at 6:00 p.m., his brother Devlal was milking a buffalo. Kalu, Uda, Latoor and Shambhu were taking liquor in front of wine shop. Accused made hue and cry and started beating Devlal. Shambhu inflicted injury with a knife on the chest of the deceased-Latoor. Accused Latoor caught hold of his brother Latoor, the deceased. It was further stated by PW-1 Chhotu that Uda caused two injuries to the deceased Latoor and Shambhu gave a knife blow on the abdomen of the deceased. When he came from his house at the spot, he was also inflicted injury with knife by the appellant-Shambhu. He sustained injury in his right elbow. His brother Latoor died on the spot. Thereafter, he reported the matter to the Police vide Ex. P. 1 and got himself medically examined.

13. In his statement PW-1 Chhotu admitted that his house is situated at a distance of 100 steps. As already stated, the Medical Jurist Dr. Sharma found only two

injuries on the dead body of the deceased Latoor. One injury was on anterior fold of left Axilla and another injury was on the left iliac fossa, 3' below umbilicus. PW-1 Chhotu stated in his cross-examination that when he reached at the spot, he saw blood coming out of his injuries of chest and abdomen. He further stated that no talks between him and the deceased took place. He also stated that when he reached at the spot, he found Latoor unconscious. Thus, it is crystal clear from his testimony given in cross-examination that he did not see the appellant Shambhu causing injury to the deceased Latoor. In our considered opinion, he reached at the place of occurrence after the deceased Latoor had sustained both the injuries, and, therefore, PW-1 Chhotu could not say that who caused injuries to the deceased. Apart from that, PW-1 Chhotu also stated that accused Uda, who has been acquitted by the learned trial judge, inflicted two injuries with knife to the deceased. As there were only two injuries found on the dead body of the deceased-Latoor and Uda were alleged to have inflicted two injuries with knife, by PW-1 Chhotu, how could the appellant be held guilty for causing injury to the deceased. PW-1 Chhotu further stated in his cross-examination that both Shambhu and Uda caused injuries to the deceased simultaneously. Injury No. 1 found on the dead body of the deceased was specifically attributed to the accused Uda by PW-1 Chhotu. With regard to Injury No. 2 found on the dead body of Latoor, PW-1 Chhotu stated that both Shambhu and Uda caused injury simultaneously, as stated above. In these circumstances, how can it be said without reasonable doubt that the appellant had caused injury No. 2 to the deceased. It may be mentioned here that in the opinion of the Medical Jurist Dr. Sharma, Injury No. 2 found on the dead body of the deceased was fatal. Thus, on the basis of the testimony of PW-1 Chhotu, the appellant cannot be held guilty for causing death of Latoor.

14. PW-5 Lala stated that when he was called by his wife, he reached at the place of occurrence from his house and saw Shambhu, Uda and Latoor causing injuries with knives to his son Latoor. Kalu was catching hold of the deceased Latoor. He further stated that accused Latoor inflicted an injury with knife on the neck of the deceased Latoor. Shambhu caused two injuries with knife on the abdomen of the deceased, Uda caused injury with knife on the neck of the deceased. On close scrutiny, we find that the testimony of PW-5 Lala is not reliable and trustworthy. As

per his statement, the appellant inflicted two injuries with knife on the abdomen of the deceased, but, only one injury was found on the abdominal region on post-mortem examination. According to PW-5 Lala, the deceased sustained four injuries caused by knife, but, only two injuries were found on the dead body by the Medical Jurist Dr. Sharma. In his cross-examination, he stated that at about 4:00 p.m., all the accused had left the wine shop after taking liquor. In written report Ex. P. 1 and as per the statement of PW-1 Chhotu, the incident was alleged to have taken place at about 6:00 p.m. when the four accused were taking liquor. This fact also proves that PW-5 Lala was not the eye-witness of the alleged incident. It was also stated by PW-5 Lala that the deceased was encircled by all the accused and as soon as he reached at the spot, the deceased fell down. Therefore, it is clear from this statement also that out of four accused, who caused the injuries to the deceased, was not seen by him. Apart from that, he also stated that he did not know who reported the matter to the Police and he was not examined by the Police. In view of such type of statement, PW-5 Lala cannot be held to be the eye-witness of the occurrence.

15. So far as the statement of PW-6 Nanda is concerned, he also is sailing in the same boat. He stated that the appellant Shambhu inflicted one injury on the chest and two injuries on the abdomen of the deceased, whereas only two injuries were found on the dead body at the time of post-mortem examination. There is discrepancy between his statement and that of PW-1 Chhotu. PW-1 Chhotu stated that accused Uda also caused injury to the deceased, whereas, according to the statement of PW-6 Nanda, no injury was caused by Uda. He also stated that at the time of the incident, he was taking meals at his residence. The deceased sustained only two injuries, which might have been caused within a minute and in our opinion, PW-6 Nanda had not seen the appellant causing any injury to the deceased. He might have reached at the place of occurrence after the incident.

16. For the reasons stated above and on close scrutiny of the statements of PW-1 Chhotu, PW-5 Lala and PW-6 Nanda, we come to the conclusion that they had not seen the appellant causing injury to the deceased and on the basis of their testimony, the appellant cannot be held guilty for the murder of Latoor. The learned Judge has committed illegality in placing reliance upon the testimony of

the aforesaid witnesses with regard to the involvement of the appellant in causing death of the deceased Latoor and in convicting and sentencing him under Section 302, IPC. Moreover, the material witnesses Devlal and mother of the deceased were not produced by the prosecution. It was alleged by the prosecution that first of all Devlal was beaten by the accused and thereafter Latoor, the deceased and PW-1 Chhotu were inflicted injuries by the appellant and his companions. PW-5 Lala, who is father of the deceased, stated that when he was called by his wife, he reached at the spot. Thus, both Devlal and the mother of the deceased were alleged to be the eye-witnesses, but, they were not examined by the prosecution. As regards the recovery of the knife, it is very much doubtful. PW-9 Harimohan Sharma, SHO, P.S. Mandana, stated that on the information and at the instance of the appellant Shambhu, a knife was recovered from the house of the appellant. He further stated that at the time of recovery, PW-13 Janki Lal and PW-14 Birdhilal were present. PW-13 Jankilal stated that when he reached at the house of the appellant, the knife was already in the hand of the SHO. It was shown to him. He also stated that Birdhilal came there after his arrival. Jankilal was not declared hostile by the prosecution. PW-14 Birdhilal stated in his cross-examination that after breaking open the lock, the appellant's house were open and the knife was recovered. But PW-9 Harimohan Sharma as well as PW-13 Janki Lal did not stated that the knife was recovered after breaking open the lock of the appellant's house. Apart from that, the knife which was alleged to have been recovered from the appellant's house was not shown to theses witnesses at the time of their examination in the trial Court and no material exhibit was put on it. Thus, the recovery of the knife is of no help to the prosecution.

17. For the reasons stated above, the conviction and sentence awarded to the appellant under Section 302, IPC cannot be upheld.

18. The appellant has also been convicted and sentenced under Section 324, IPC for causing injury with sharp weapon to PW-1 Chhotu.

19. PW-1 Chhotu stated that when he reached at the place of occurrence, the appellant Shambhu inflicted injury with a knife on his right elbow. So far as his injury is concerned, PW-1 Chhotu gets corroboration from medical evidence. PW-7

Dr. Y.K. Sharma stated that on 25.6.1990 at 10:00 a.m., on the police request, he examined Chhotu S/o Lala by caste-Gujar, R/o Ranpur and found following two injuries on his person:

(1) Incised wound 3'x 1/4'x 1/4' vertical on inner and medial part of right upper arm.

(2) Incised wound 3/4'x 1/16'x 1/16' on palm of left hand.

20. Dr. Sharma further stated that both the injuries were simple and caused by sharp weapon. Duration of injuries was within 24 hours. He prepared injury report Ex. P. 7.

21. On close scrutiny of the statements of PW-1 Chhotu and PW 7 Dr. Sharma, we come to the conclusion that the appellant Shambhu caused injury with sharp weapon to Chhotu when he reached at the spot and the appellant has rightly been convicted under Section 324, IPC by the trial Court.

22. Consequently, the appeal of the appellant is partly allowed. His conviction and sentence under Section 302, IPC is set aside and he is acquitted from this charge.

23. The conviction and sentence under Section 324, IPC is maintained. The appellant is in Central Jail, Kota and has remained in custody for more than one year and, therefore, he shall be released forthwith, if not required in any other case.